87-724

Docket No. 87-

SUPREME COURT OF THE UNITED STATES
1987 Term

ERNEST DAVID RIDDLE,
Petitioner,

--vs--

STATE OF NORTH CAROLINA

ON PETITION FOR
WRIT OF CERTIORARI TO
THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

BALEY, BALEY & CLONTZ, P.A.
Attorneys for Petitioner
James M. Baley, Jr.
510 Northwestern Plaza
Asheville, N.C. 28801
704/258-0012

QUESTIONS PRESENTED

I. WAS PETITIONER DENIED RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS BY THE EXCLUSION OF TESTIMONY PROFFERED IN HIS BEHALF IMPEACHING A STATE WITNESS WITH PRIOR INCONSISTENT STATEMENTS?

II. WAS PETITIONER'S RIGHT TO PRESENT A COMPLETE DEFENSE DENIED BY THE TRIAL COURT'S STRIKING HIS TESTIMONY REGARDING OUT OF COURT STATEMENTS MADE BY A STATE WITNESS IMPEACHING THE TESTIMONY GIVEN BY THAT WITNESS?

III. DID THE EXCLUSION OF A LETTER WRITTEN BY A STATE WITNESS SOUGHT TO BE ADMITTED FOR PURPOSES OF IMPEACHMENT AND TO ENABLE JURORS TO DRAW INFERENCES REGARDING THE RELIABILITY OF ACCUSATIONS MADE BY THE ALLEGED VICTIMS DENY PETITIONER RIGHTS OF CONFRONTATION AND DUE PROCESS?

IV. DID THE ULTIMATE IMPACT OF THE TRIAL COURT'S EVIDENTIARY RULINGS DENY PETITIONER A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS?

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State v. Riddle, No. 8628SC1227 (N.C. Ct. App. June 2, 1987).

State v. Riddle, No. 375P87 (N.C. July 28, 1987).

The opinion of the North Carolina Court of Appeals is set forth in the Appendix at pages 9 - 14. The order of the North Carolina Supreme Court denying review appears in the Appendix at page 15.

STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court by 28 U.S.C. Section 1257(3). Petitioner seeks review of a decision by the North Carolina Court of Appeals, entered June 2, 1987, at 8:25 a.m. The case was denied review by the North Carolina Supreme Court on July 28, 1987.

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. amend. XIV:

SEE Appendix, Page A54

STATEMENT OF THE CASE

Petitioner, Ernest David Riddle, was arrested on September 25, 1985, and indicted in December, 1985, on one count of first degree rape and two counts of taking indecent liberties with minors. He was tried and on April 25, 1986, was found not guilty of first degree rape, but convicted on two counts of taking indecent liberties with minors in violation of N.C.Gen.Stat. Section 14-202.1. He was sentenced to three years on each count to run consecutively. (A.pp. 1 - 6)

The alleged victims were two of Petitioner's step-children, Tina A. Hatcher and Sherry Darlene Taylor. The girls' mother and Petitioner's former wife is Wanda Riddle. Petitioner also had a step-son by his marriage to Wanda Riddle, Tony Taylor.

During trial the court made three

evidentiary rulings which are the subject of this petition. Petitioner contends that as a result of those rulings he was denied a meaningful opportunity to present a defense as guaranteed by the Sixth and Fourteenth Amendments.

First, as part of his case in chief, Petitioner called Catherine Brown as a witness. Brown was an acquaintance of both Petitioner and Wanda Riddle. Her testimony was preserved for the record, but excluded as evidence. She was to testify in reference to a conversation she had with State's witness Sharon Hall. Hall had testified on direct examination during the State's case that Petitioner had made admissions of guilt to her during a telephone conversation. Because the State had opened the door on the factual issues arising from that conversation, Petitioner offered Brown's testimony to impeach Hall and corroborate his version of that conversation. Brown would have testified

that Hall told her that "she [Hall] didn't think Petitioner was guilty. . . ." (A.p. 43) That testimony was proffered as a statement by Hall completely inconsistent with her in-court testimony. The trial court denied Petitioner the opportunity to submit Brown's testimony to the jury. (A.p. 34-44)

The second ruling for which Petitioner seeks review refers to the trial court's striking a portion of testimony which he proffered in his own behalf. Referring again to the telephone conversation with State's witness Sharon Hall, Petitioner offered testimony of a response Hall made to Petitioner's denial of the accusations leveled against him by his step-children. According to Petitioner, Hall agreed that the accusations were doubtful and said "I know how Tina lies." (A.p. 45) That testimony was offered to impeach Hall's earlier contention that Petitioner admitted his guilt and that she had responded to his

alleged admission by blaming him. Petitioner's testimony was stricken on motion by the State. (A.p. 45-46)

The third assignment of error in issue is the exclusion by the trial court of a letter written by State's witness, Wanda Riddle. That letter, identified at trial as Defendant's Exhibit 3, was denied admission into evidence on the grounds of irrelevancy. The letter described intimate details of the Riddle family relationships. It also made explicit reference to the sexual abuse of Sherry Taylor by another man at a time prior to the alleged acts of Petitioner. The letter provided fertile ground for impeachment of State's witnesses Wanda Riddle and Tony Taylor and for drawing reasonable inferences regarding the reliability of accusations made by Tina and Sherry. Although those reasons were stated as grounds for the letter's admission into evidence, it was excluded by the trial court.

The three evidentiary rulings described above were assigned as prejudicial error in the Appellate record before the North Carolina Court of Appeals. (A.pp. 7 -8) That Court found the issues and assignments of error in reference to Catherine Brown's testimony and Petitioner's stricken testimony to be unpersuasive. (A.p. 13) In its opinion the North Carolina Court of Appeals sustained the trial court's exclusion of the letter concluding that nothing in the letter concerned charges against Petitioner or his relationship with his step-daughters. (A.p. 11) On Petition for Discretionary Review to the North Carolina Supreme Court, Petitioner explicitly raised the question of Sixth and Fourteenth Amendment issues in reference to all three exclusions. (A.pp. 22) The North Carolina Supreme Court denied review. (A.p. 15)

The North Carolina Supreme Court

having denied review of the decision of the North Carolina Court of Appeals, Petitioner applies to this Court for a writ of certiorari on the grounds that his Sixth and Fourteenth Amendment rights have been violated.

ARGUMENT

I. PETITIONER WAS DENIED RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS BY THE EXCLUSION OF TESTIMONY PROFFERED IN HIS BEHALF IMPEACHING A STATE WITNESS WITH PRIOR INCONSISTENT STATEMENTS.

The Sixth Amendment provides criminal defendants the right to be confronted by witnesses against him and the right to have compulsory process for obtaining witnesses in his favor. U.S. Const. amend. VI. Rights of confrontation and compulsory process apply to state criminal trials through the Fourteenth Amendment. See Pointer v. Texas, 380 U.S. 400 (1965) (Right of Confrontation), and Washington v. Texas, 388 U.S. 14 (1967) (Compulsory Process). The right of an accused in a criminal trial to due process

is the right to a fair opportunity to defend against the State's accusations. The right to confrontation and cross-examination and the right to call witnesses in one's own behalf are essential to due process. Chambers v. Mississippi, 410 U.S. 284, 294 (1973). Petitioner Ernest David Riddle was denied these fundamental rights due to the exclusion of testimony proffered in his behalf by Catherine Brown.

Brown was called by Petitioner and allowed to testify outside the jury's presence in reference to a conversation she had with Sharon Hall, a State witness. Her testimony was elicited for purposes of impeaching Hall. During the State's case Hall had testified to inculpatory statements allegedly made by Petitioner to her in a telephone conversation. Petitioner purportedly told Hall "that he had been playing with the girls," (A.p. 31), in context implying that he had molested his step-children. Catherine

Brown was called to testify that Hall had made statements to her which were completely inconsistent with Petitioner's having made such statements or having admitted any guilt. Given the opportunity, she would have testified that Hall believed that Petitioner was innocent of the accusations against him. Specifically, Hall told Brown that "she didn't think he [Petitioner] was guilty of what he was being charged with . . . ." (A.p. 43) Although defense counsel argued that Brown's testimony was offered to impeach Hall, the trial court did not allow Brown to testify apparently on grounds that personal opinions as to guilt or innocence are not admissible; (A.pp. 34-40) disregarding the fact that the State, not the Defendant, had called Hall as its witness and brazenly opened the door to Petitioner's proffered impeachment evidence.

Brown's testimony was a crucial element in Petitioner's defense because it

cast doubt on whether Hall truthfully recounted the conversation she had with Petitioner. Also, Brown's testimony would have served to corroborate Petitioner's version of that conversation. Petitioner's Sixth and Fourteenth Amendments rights were violated because the exclusion deprived him of an essential defense. As this Court noted in Faretta v. California, 422 U.S. 806 (1975),:

> The rights to notice, confrontation, and compulsory process, when taken together, guarantee that a criminal charge may be answered in a manner now considered fundamental to the fair administration of American justice--through the calling and interrogation of favorable witnesses, in the orderly introduction of evidence. In short, the [Sixth] Amendment constitutionalizes the right in an adversary criminal trial to make a defense as we know it. Faretta, 422 U.S. at 818.

Petitioner's opportunity to defend against Hall's accusations was prejudicially impaired by the trial court's ruling.

An essential component of procedural fairness in due process is an

opportunity to be heard. In re Oliver, 333 U.S. 257, 273 (1948), Grannis v. Ordean, 234 U.S. 385, 394 (1914). That opportunity is an empty one if the State is permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to a defendant's claim of innocence. Crane v. Kentucky, 476 U.S. , 90 L.Ed.2d 636, 645 (1986). Allowing the trial court's ruling to stand in this case denies Petitioner that procedural fairness guaranteed by due process.

Catherine Brown's testimony was certainly relevant in that it tended to make the existence of Petitioner's purported admission of guilt to Hall less probable. The State argued that her testimony was not competent because it was opinion testimony regarding Petitioner's guilt or innocence. (A.pp. 35-38) That was not, however, the purpose for its proffer. Determination of guilt or innocence is, of course, a matter for the

jury; whose province is most certainly invaded when only one side of a disputed fact is allowed to be heard. Brown's testimony was offered to cast doubt on Hall's believability as to the conversation with Petitioner which she described. Her testimony was reliable with regard to the purposes for which it was offered. She was the only non-interested witness available to cast doubt on Hall's version of the telephone conversation.

The State opened the door to the contents of the telephone conversation between Hall and Petitioner on direct examination of Hall, (A.pp. 32-34), thereby putting that conversation in issue. Hall denied having made the inconsistent statements to Brown on cross-examination. (A.p. 33) Consequently, Brown's testimony was essential, and not collateral, to Petitioner's defense.

Few rights are more fundamental than that of an accused to present

witnesses in his own defense. In the exercise of this right, an accused must comply with established rules of procedure and evidence designed to assure fairness and reliability in the ascertainment of guilt or innocence. Chambers v. Mississippi, 410 U.S. 484, 302 (1973). In this case, Petitioner proffered competent, reliable testimony in accordance with the rules of evidence and was denied the fundamental rights to present that testimony to the jury. The exclusion of competent and reliable evidence, central to the defense, deprives a Defendant of the basic right to have the prosecutor's case encounter and "survive the crucible of meaningful adversarial testing." Crane v. Kentucky, 476 U.S. , 90 L.Ed.2d 636, 645 (1986), and see Washington v. Texas, 388 U.S. 14, 22-23 (1967). The effect of excluding Brown's testimony in this case was to preserve and create in the mind of the jury an image of reliability for Hall's testimony. The jury was not presented with

any impeaching evidence by a disinterested witness on the question of Petitioner's alleged admission. Petitioner was denied the opportunity to have the State encounter adversarial testing on that issue.

The reasoning employed in the Crane decision supports Petitioner's argument. Crane addressed the issue of whether a criminal defendant was deprived of Sixth and Fourteenth Amendment rights by the trial court's exclusion of evidence tending to cast doubt on a prior confession. This Court held that those rights were denied by the exclusion of evidence tending to show unreliability of a confession. If a Defendant is entitled to present evidence in explanation of a confession admittedly made, then a fortiori a Defendant should have the right to present evidence to support his denial that an admission was made at all. This Court noted in Crane that the opportunity to refute State's evidence and to present a complete defense is of constitutional

dimension whether such rights are rooted in the Due Process Clause or in the rights of confrontation or compulsory process. Crane, 476 U.S. at , 90 L.Ed.2d at 645.

Hall's testimony was severely damaging. Prosecutors generally have no better evidence than admissions of guilt by an accused. It is essential to note, as this Court did in Lego v. Twomey, 404 U.S. 477, 485-486 (1972), that a confession may be shown to be insufficiently corroborated or otherwise unworthy of belief. In the case sub judice, Petitioner's proffered evidence refuting the very existence of an alleged admission was withheld from the jury. His Sixth and Fourteenth Amendment rights were denied as a result.

II. PETITIONER'S RIGHTS TO PRESENT A COMPLETE DEFENSE WERE DENIED BY THE TRIAL COURT'S STRIKING HIS TESTIMONY REGARDING OUT OF COURT STATEMENTS MADE BY A STATE WITNESS IMPEACHING THE TESTIMONY GIVEN BY THAT WITNESS.

The Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. Crane v. Kentucky, 476 U.S. , 90 L.Ed.2d 636, 645 (1986). In this case, State's witness Sharon Hall testified to statements allegedly made by Petitioner incriminating himself. Testifying in his own behalf, Petitioner denied having made the statements, and attempted to recount his version of the conversation. The trial court struck a significant portion of his testimony. Petitioner attempted to testify as to Hall's response to his denial of the accusations. (A.p. 45) According to Petitioner, Hall initially agreed that the accusations were ridiculous and responded by saying "I know how Tina lies." (A.p. 45) By sustaining the State's motion to strike, the trial court denied Petitioner the opportunity to enter into evidence a prior statement by Hall which contradicted her testimony.

Because Petitioner's only defense is that the accusations leveled against him are groundless, his defense necessarily entails casting doubt on the testimony of State witnesses. The stricken testimony is an essential component of that defense because it is evidence that Hall's testimony lacked credibility. Hall and Petitioner both indicatd that a telephone conversation occurred between them, but they presented radically different versions of the substance of this telephone conversation. Striking Petitioner's evidence of Hall's initial response was a subtle form of instructing the jury to believe Hall's testimony. The jury could not consider evidence that Hall, whom the State called as a witness, initially questioned the validity of the accusations and then changed her mind by the time of trial.

III. THE EXCLUSION FROM EVIDENCE OF A LETTER WRITTEN BY A STATE WITNESS SOUGHT TO BE ADMITTED FOR PURPOSES OF IMPEACHMENT AND TO ENABLE JURORS TO DRAW INFERENCES REGARDING THE RELIABILITY OF ACCUSATIONS MADE BY THE ALLEGED VICTIMS DENIED PETITIONER RIGHTS OF CONFRONTATION AND DUE PROCESS.

The Sixth Amendment right to confront witnesses, applicable to state criminal trials through the Fourteenth Amendment, entitles the accused to cross-examine witnesses against him. See e.g. Pointer v. Texas, 380 U.S. 400 (1965), Brookhart v. Janis, 384 U.S. 1 (1966), Smith v. Illinois, 390 U.S. 129 (1968). Confrontation means more than being allowed to confront the witness physically. Decisions construing the confrontation clause have held that a primary interest secured by that clause is the right of cross-examination. Davis v. Alaska, 415 U.S. 308, 315-317 (1974). Cross-examination encompasses impeachment, and is the principal means by which the believability of a witness and the truth of

his testimony are tested. Davis, 415 U.S. at 316. To make an inquiry of a state witness effective, defendants should be permitted to expose to the jury facts from which they can appropriately draw inferences relating to the reliability of that witness. Davis, 415 U.S. at 318.

In this case, Petitioner was denied Sixth and Fourteenth Amendment rights of confrontation due to the trial court's exclusion of Defendant's Exhibit 3. (A.p.48-53) Exhibit 3 was a letter written by Wanda Riddle, a State witness and former wife of Petitioner. The letter described in intimate detail facts crucial to Petitioner's defense. Excluding the letter precluded an effective cross-examination impeaching the testimony of Wanda Riddle and Tony Taylor, another State witness. The jury was also prevented exposure to facts from which inferences might fairly be drawn relating to the reliability of the accusations made against

Petitioner.

Although not directed toward any specific factual issue of the trial, the letter had substantial impeachment value as to several of the State's key witnesses. Rather than confining its case to the alleged sexual abuse of Tina and Sherry, the State also attempted to prove that Petitioner physically abused his step-son, Tony Taylor. (A.pp. 47) The letter explicitly refuted that contention. Wanda Riddle wrote "David [Petitioner] has never abused Tony." (A.p. 51) In addition to impeaching Tony's testimony, the letter corroborated Petitioner's denial of ever having beaten Tony.

The letter also impeached the testimony of Wanda Riddle. During trial, Mrs. Riddle was asked about an incident of possible sexual abuse of Sherry by a man named Howard McFalls. Her trial testimony was obviously an attempt to obscure this earlier incident. Mrs. Riddle testified

that McFalls, while asleep in bed with Sherry, had simply placed his hand on Sherry's straddle. (A.p. 48) Compare that testimony with the narrative she offered:

> "About three years ago, one night Sherry started to cry and said Howard had put his hands in her pants. Tony saw this and remembers it. He was fondling her. Everything came out. We quit going down there and I refused to let him see the kids." (A.pp. 50)

The letter also impeaches Mrs. Riddle's testimony as to how she found out about the McFalls incident. She testified that Petitioner had informed her. She also implicated Petitioner by testifying that on reporting the McFalls incident to her "he [Petitioner] really seemed pleased about it." (A.p. 48) The letter clearly states that Wanda saw Sherry cry and that Sherry informed her of McFalls' molestation. Furthermore, Mrs. Riddle's implication of Petitioner in reference to the McFalls incident is evidence of

vindictiveness, thereby casting doubt on the credibility of her testimony.

The portions of the letter concerning the alleged incident with McFalls, whether true or false, have significant probative value on the questions of Sherry's credibility. She was abused by McFalls, or if not, she obviously fabricated such incident. Either way, the letter casts serious doubt upon the believability of her testimony concerning Petitioner. A prior incident of sexual abuse would provide her with information necessary to fabricate accusations against Petitioner. A prior fabrication of sexual abuse would certainly increase the probability that the accusations against Petitioner were also fabrications. In any event, Sherry undoubtedly knew that her revelation or fabrication, whichever the case may have been, of the McFalls incident removed him from her life; and she could expect the same to occur with regard to

Petitioner. Fabrication of accusations against Petitioner is the most logical explanation of their vagueness about time and circumstances.

Due to the exclusion of Wanda Riddle's letter, the defense was unable to impeach State's witnesses on crucial points, and was unable to present the jury with facts from which reasonable inferences could be drawn. Impeachment and questions of reliability of that magnitude may very well have been sufficient to raise reasonable doubts in the minds of jurors. Consequently, Petitioner's defense was undermined and he was denied rights of confrontation guaranteed by the Sixth and Fourteenth Amendments.

IV. THE ULTIMATE IMPACT OF THE TRIAL COURT'S EVIDENTIARY RULINGS DENIED PETITIONER A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS.

Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. Crane v. Kentucky, 476 U.S. at , 90 L.Ed.2d at 645. Petitioner was denied his constitutional guarantees to present a complete defense due to the cumulative effect of the trial court's evidentiary rulings. This Court made clear in Chambers v. Mississippi, 410 U.S. 284 (1973), that a denial of due process may rest on the ultimate impact of applying technical rules of evidence when viewed in conjunction with the exclusion of witnesses called by a criminal defendant in his favor. Chambers, 410 U.S. at 298. The Crane decision apparently extends that rationale to encompass Sixth Amendment rights as well. The trial court's rulings cumulatively

violated Petitioner's rights as established by Chambers and Crane to present a complete defense.

The State's witnesses were insulated from impeachment and effective cross-examination. Catherine Brown's testimony regarding statements made by Sharon Hall was excluded. Those statements were utterly inconsistent with Hall's testimony and would serve as grounds for impeachment. Petitioner's testimony refuting Hall's version of the incriminating telephone conversation was stricken. Wanda Riddle's letter, which was the most fertile ground for cross-examination, was excluded as irrelevant. The net effect of these rulings assured the sacrosanctity of the prosecutor's case. The jury was protected from reason to doubt Petitioner's guilt. The Constitution demands more of a fair trial.

Petitioner is cognizant of the wide latitude left to judges to exclude

evidence that is repetitious, only marginally relevant, or which poses an undue risk of harrassment. Delaware v. Van Arsdall, 475 U.S. , 89 L.Ed.2d 674 (1986). Petitioner does not question the power available to states to exclude evidence by applying evidentiary rules which assure fairness and reliability. Crane v. Kentucky, 476 U.S. at , 90 L.Ed.2d at 644. This case, however, presents errors which strike the very core of Petitioner's defense. The trial court abused its discretion by insulating the State's case from impeachment and from reasonable inferences. Competent and reliable evidence was excluded in contravention of the applicable rules of evidence. Consequently, the errors were not harmless, but prejudicial and not within reasonable bounds of discretion.

CONCLUSION

Petitioner respectfully prays that the Court grant a writ of certiorari pursuant to 28 U.S.C. Section 1256(3).

BALEY, BALEY & CLONTZ, P.A.

By: _____

James M. Baley, Jr.
Attorneys for Petitioner
510 Northwestern Plaza
Asheville, NC 28801
704/258-0012

APPENDIX

Contents:

STATE OF NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF BUNCOMBE
ASHEVILLE SEAT OF COURT
FILE NOS. 85 CrS 22307, 22308

STATE OF NORTH CAROLINA

vs.

ERNEST DAVID RIDDLE,
Defendant.

JUDGMENT
and
COMMITMENT

Defendant Ernest David Riddle, 35-year old white male, was found guilty by a jury of taking indecent liberties with a minor (85 CrS 22307) in violation of G.S. No. 14-202.1. The date of the offense was June, 1982. Attorney for State, Shirley Brown. Attorneys for Defendant, Bob Swain and Joel Stevenson, retained.

The Court having considered evidence, arguments of counsel, and statement of the defendant, ORDERS that the defendant be imprisoned for a term of three years in the custody of the N.C. Department of Correction. The defendant shall be given credit against this sentence for 7 days spent in confinement prior to the date of

this Judgment.

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and makes no written findings because the prison term imposed does not require such findings.

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies of the judgment to the custody of the agency named on the reverse to serve the sentence imposed until he shall have complied with the conditions of release pending appeal.

4/30/86

/s/Hollis M. Owens, Jr.
Judge Presiding

The Defendant excepts and objects to the entry of the foregoing Judgment and Commitment. EXCEPTION NO. 41

The defendant gives notice of appeal

from the judgment of the Superior Court to the Court of Appeals. The defendant is allowed 75 days to serve a proposed record on appeal and the State is allowed 30 days after such service to serve objections or a proposed alternative record on appeal.

Release of defendant is: denied.

4/30/86

/s/Hollis M. Owens, Jr.
Judge Presiding

STATE OF NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF BUNCOMBE
ASHEVILLE SEAT OF COURT
FILE NO. 85 CrS 22308

STATE OF NORTH CAROLINA

vs.

ERNEST DAVID RIDDLE,
Defendant.

JUDGMENT and COMMITMENT

Defendant Ernest David Riddle, 35-year old white male, was found guilty by a jury of taking indecent liberties with a minor (85 CrS 22308) in violation of G.S. No. 14-202.1. The date of the offense was May, 1982. Attorney for State, Shirley Brown. Attorneys for Defendant, Bob Swain and Joel Stevenson, retained.

The Court having considered evidence, arguments of counsel, and statement of the defendant, ORDERS that the defendant be imprisoned for a term of three years in the custody of the N.C. Department of Correction. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced

below: 85 CrS 22307 in Buncombe County Superior Court on 4/30/86.

The Court has considered the aggravating and mitigating factors in G.S. 15A-1340.4(a) and makes no written findings because the prison term imposed does not require such findings.

It is ORDERED that the Clerk deliver three certified copies of this Judgment and Commitment to the Sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies of the judgment to the custody of the agency named on the reverse to serve the sentence imposed until he shall have complied with the conditions of release pending appeal.

4/30/86

/s/Hollis M. Owens, Jr.
Judge Presiding

The Defendant excepts and objects to the entry of the foregoing Judgment and Commitment. EXCEPTION NO. 42

The defendant gives notice of appeal from the judgment of the Superior Court to the Court of Appeals. The defendant is allowed 75 days to serve a proposed record on appeal and the State is allowed 30 days after such service to serve objections or a proposed alternative record on appeal.

Release of defendant is: denied.

4/30/86

/s/Hollis M. Owens, Jr.
Judge Presiding

PERTINENT ASSIGNMENTS OF ERROR

10. The trial court committed prejudicial and reversible error by striking the Defendant-Appellant's testimony that Sharon Hall told the Defendant-Appellant "I know Tina lies."

ASSIGNMENT OF ERROR NO. 10, BASED ON DEFENDANT-APPELLANT'S EXCEPTIONS NOS. 30 (T p 228); 31 (T p 229); 41 (R p 50); 42 (R p 52).

11. The trial court committed prejudicial and reversible error by excluding the testimony of Catherine Brown, witness for the Defendant-Appellant, who would have testified to the character and reputation of the Defendant-Appellant and impeached State's witness, Sharon Hall.

ASSIGNMENT OF ERROR NO. 11, BASED ON DEFENDANT-APPELLANT'S EXCEPTIONS NOS. 32 (T p 303); 41 (R p 50); 42 (R p 52).

12. The trial court committed prejudicial and reversible error in excluding Defendant's Exhibit No. 3, a letter written by State's witness, Wanda Riddle, which letter, among other things, impeached Wanda Riddle and Tony Taylor and corroborated the Defendant-Appellant.

ASSIGNMENT OF ERROR NO. 12, BASED ON DEFENDANT-APPELLANT'S EXCEPTIONS NOS. 33 (T p 336); 34 (T p 336); 35 (T p 337); 36 (T p 337, R p 34); 41 (R p 50); 42 (R p 52).

NO. 8628SC1227
NORTH CAROLINA COURT OF APPEALS
Filed: 2 June 1987

Buncombe County
Nos. 85 CRS 22307
85 CRS 22308

STATE OF NORTH CAROLINA

v.

ERNEST DAVID RIDDLE

Appeal by defendant from Owens, Judge. Judgments entered 30 April 1986 in Superior Court, Buncombe County. Heard in the Court of Appeals 7 April 1987.

Defendant was charged in proper bills of indictment with 1) first degree rape and taking indecent liberties with his eleven-year-old stepdaughter and 2) taking indecent liberties with his nine-year-old stepdaughter. Defendant was convicted of taking indecent liberties with both children in violation of G.S. 14-202.1. From the judgment imposing two consecutive three-year terms of imprisonment, defendant appeals.

Attorney General Lacy H. Thornburg, by

Assistant Attorney General Debra K. Gilchrist for the State.

Public Defender J. Robert Hufstader for defendant appellant.

ARNOLD, Judge.

All of defendant's assignments of error relate to the admission and exclusion of evidence.

Defendant contends that the trial court erred in excluding a letter purportedly written by Wanda Riddle, defendant's wife and the victims' mother. Defendant argues that the letter should have been admitted under G.S. 8C-1, Rule 401 because it impeached Wanda Riddle and her son Tony Taylor.

The letter was prepared in 1981 for an attorney who was representing both Wanda Riddle and defendant in a child custody matter concerning Wanda's son, Tony Taylor. The attorney testified that he did not know who prepared the letter and that

he could not separate information that Wanda Riddle disclosed to him from information that defendant disclosed to him. The letter outlines Wanda Riddle's marriages, the births of her children and the problems with her son, Tony Taylor. Nothing in the letter concerns the charges against the defendant or his relationship with his stepdaughters. Therefore, the letter was properly excluded as irrelevant.

Defendant next contends that the trial court erred in allowing Cynthia VanDeusen, a family nurse practitioner, to testify that "the condition of the vagina of [the older victim] in 1985 was consistent with intercourse with the defendant in 1982." He argues that VanDeusen, who was not qualified as an expert, was not competent to testify on such matters.

We briefly note that defendant misstates VanDeusen's testimony. The record indicates that VanDeusen testified that the condition of the victim's vagina

was consistent with intercourse with an adult.

VanDeusen's testimony was properly admitted under G.S. 8C-1, Rule 701 which states:

> If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue.

VanDeusen's testimony regarding the conditions of the victim's vagina was based on her observations made during the pelvic exam she performed on the victim. These observations and her background and training as a nurse made her testimony helpful and relevant to a determination of whether the victim had been raped. Therefore, the trial court did not err in admitting VanDeusen's testimony.

Defendant also contends that the trial court erred in allowing VanDeusen to testify about the possible effects of the

drug phenobarbital on a child.

Although VanDeusen was not offered as an expert witness, she testified that she was familiar with the drug. Her medical background and training as a nurse made her more qualified than the jury to form an opinion as to the effects of phenobarbital on a child. Her opinion regarding the drug was helpful to the jury. Therefore, it was not error to admit the testimony. See State v. Long, 58 N.C. App. 467, 294 S.E.2d 4 (1982).

Even assuming arguendo that it was error to admit the testimony, defendant was not harmed since he was able to cross-examine the witness and introduce testimony from a doctor on the possible effects of phenobarbital.

After a careful review of the record, we find defendant's remaining assignments of error to be unpersuasive. This trial was free of prejudice to the defendant.

No error.

Judges WELLS and ORR concur.

Report per Rule 30(e).

No. 375P87
TWENTY-EIGHTH DISTRICT
SUPREME COURT OF NORTH CAROLINA

From Buncombe
(8628SC1227)

STATE OF NORTH CAROLINA

v.

ERNEST DAVID RIDDLE

ORDER

Upon consideration of the petition filed by Defendant in this matter for a writ of certiorari to review the decision of the North Carolina Court of Appeals, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

> "Denied by order of the Court in conference, this the 28th day of July 1987.
>
> s/Whichard, J.
> For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 31st day of July 1987.

J. GREGORY WALLACE
Clerk of the Supreme Court

NO. 86 SC 546M
TWENTY-EIGHTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

From Buncombe
85 CRS 22307, 22308

STATE OF NORTH CAROLINA

v.

ERNEST DAVID RIDDLE

PETITION FOR DISCRETIONARY REVIEW

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA

Defendant Ernest David Riddle, respectfully petitions the Supreme Court of North Carolina that the Court certify for discretionary review the Judgment of the Court of Appeals affirming his conviction on two counts of indecent liberties, a copy of which is attached hereto in accordance with Rule 15(c) of the North Carolina Rules of Appellate Procedure, on the basis that this cause involves legal principles of major significance to the jurisprudence of this state and the decision of the Court of Appeals appears likely to be in conflict with prior decisions of the Supreme Court.

In support of this Petition, Defendant respectfully shows unto the Court the following:

STATEMENT OF FACTS

Defendant was tried before a jury and the Honorable Hollis M. Owens, Jr., Judge Presiding over the April 21, 1986 regular criminal session of the Superior Court of Buncombe County, on charges of one count first degree rape and two counts indecent liberties. The jury returned verdicts of "not guilty" on the first degree rape count and "guilty" on both counts of indecent liberties. The Court entered Judgment accordingly and sentenced Defendant to two consecutive three-year terms of imprisonment. From said sentence, Defendant appealed to the North Carolina Court of Appeals. The Court of Appeals confirmed the Judgment of Superior Court in the attached decision which was filed June 2, 1987 and certified to the trial court June 22, 1987.

The State's evidence at trial included the testimony of one Sharon Hall who testified about a telephone conversation with Defendant during which, according to the witness Hall, Defendant made certain statements which would be logically construed as an admission of at least part, if not all, of the State's allegations. Defendant attempted to refute Hall's testimony by both his own testimony as to this conversation and the proffered testimony of defense witness Catherine Brown regarding a subsequent conversation which she had with the witness Hall which Defendant offered to show that Hall had expressed opinions that were inconsistent with her having heard what she claimed to have heard in her testimony. Defendant acknowledged that he had engaged in a telephone conversation with Hall concerning the alleged transactions which were at issue during this trial, but his testimony as to specific statements made by Hall presented a totally different version of

the conversation than that which had been testified to by Hall. On the State's objection and motion to strike, the Court sustained the objection and instructed the jury not to consider his quotation of Hall "I know how Tina lies." Defendant's proffered testimony of Catherine Brown was excluded altogether, but was placed on the record in the absence of the jury for purposes of appeal.

The State's evidence also included extensive testimony from Wanda Riddle, former wife of Defendant and mother of the alleged victims; and Tony Taylor, the older half-brother of the alleged victims. Defendant attempted to refute this testimony with a letter written by the witness Wanda Riddle to an attorney who had been retained to represent both Defendant and Wanda Riddle in a previous matter concerning custody of the witness Tony Taylor. The purpose of this letter was to show statements made by the witness Wanda

Riddle about Defendant during the relevant period of time that were inconsistent with her testimony during this trial and also to show bias against Defendant on the part of the witness Tony Taylor. The Court determined that this letter was not protected by the attorney-client privilege since its content had been previously discussed with Defendant by the witness Wanda Riddle, but nevertheless excluded it as evidence at trial on the grounds of irrelevancy. Defendant was allowed to place the letter on the record for purposes of appeal.

The attached Court of Appeals decision specifically discusses the proffered letter, but does not mention Defendant's efforts to testify as to the telephone conversation with the witness Hall or the proffered testimony of Catherine Brown other than in the final conclusory statement: "After a careful review of the record, we find Defendant's remaining assignments of error to be unpersuasive."

Both of these issues were, however, raised by Defendant before the Court of Appeals as Assignments of Error and argued in his brief. Therefore, in order to provide the Court with adequate background information, Defendant has attached hereto copies of the portions of the trial transcript containing the State's evidence which Defendant was attempting to refute, Defendant's proffered evidence which was excluded, Defendant's Assignments of Error to the Court of Appeals on these issues, and the portion of Defendant's brief before the Court of Appeals discussing these issues.

THE CAUSE INVOLVES LEGAL PRINCIPLES OF MAJOR SIGNIFICANCE TO THE JURISPRUDENCE OF THE STATE. North Carolina General Statute Section 7A-31(c)(2).

Defendant respectfully submits that the Court should grant discretionary review on the ground that this cause involves legal principles of major significance to the jurisprudence of this State, to wit, the right of an accused to "confront the accusers and witnesses with other testi-

mony" in accordance with Article I, Section 23, of the North Carolina Constitution; and the criminally accused's similar right of confrontation under the Sixth Amendment of the United States Constitution as made applicable to the states by the Fourteenth Amendment. Although reasonable people may differ as to precisely what is encompassed by a defendant's right to confront his accusers, it certainly includes far more than the mere right to sit in the courtroom and stare at them. This Court has long held that the right of confrontation under our North Carolina Constitution specifically includes the right to offer other evidence and testimony in refutation. State v. Wilson, 269 NC 297 (1967); State v. Garner, 203 NC 361 (1932); State v. Ross, 193 NC 25 (1927).. The Wilson decision, which involved a conviction for offenses of a similar nature to the case sub judice, comes very close to being on all fours. In Wilson, the Defendant offered impeachment evidence in the form of

testimony from his next-door neighbor which was very similar to the proffered testimony of Catherine Brown in the instant case. The trial court initially excluded such testimony on objection of the State, but on second thought allowed the court reporter to read the questions and answers to the jury. This Court found reversible error in the trial court's refusal to allow the witness to answer the questions in person in the presence of the jury. This decision speaks a fortiori to the presence of reversible error in the instant case where Defendant was totally denied the opportunity to present the proffered evidence in any form.

The right of confrontation under the Sixth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, is very similar although perhaps not identical to the right which exists under our state constitution. Very interestingly, the state provision speaks in language of a

defendant's right "to confront the accusers . . . ," while the Sixth Amendment uses the languages "to be confronted with the witnesses against him . . ." Arguably, the federal right could be considered narrower and encompassing only the right to cross-examination rather than being inclusive of the right to present refutation evidence. This tends to explain why most of the federal decisions involving a defendant's right to present evidence are stated in the context of the right to have compulsory process for obtaining witnesses rather than the right of confrontation. However, the recent and unanimous decision of the United States Supreme Court in Crane v. Kentucky, 90 L.Ed.2d 636 (1986), clearly indicates that the right of confrontation under the Sixth and Fourteenth Amendments must henceforth be considered as encompassing the right to offer refutation evidence.

It is very important that the Court bear in mind that all of the issues which

Defendant asks the Court to review involve evidence which Defendant offered for the purpose of specifically refuting other evidence entered by the State. It is a long-held and well-recognized jurisprudential principle that evidence which might otherwise be inadmissible can become admissible when the opposing party "opens the door." In the instant case, important constitutional rights of the Defendant have been violated by trial court rulings which allowed doors that were blatantly opened by the State to be slammed shut in the face of the Defendant. The jury's acquittal of Defendant on the first-degree rape count clearly indicates that a low credibility rating was given to the State's key witnesses, the alleged victims. The State was able to bolster their credibility, however, with the testimony of Hall concerning the telephone conversation. Denial to Defendant of the opportunity to refute this evidence could very easily have been the determinative factor in his

conviction.

THE DECISION OF THE COURT OF APPEALS APPEARS LIKELY TO BE IN CONFLICT WITH THE DECISION OF THE SUPREME COURT. N.C.G.S. Section 7A-31(c)(3).

Defendant respectfully petitions this Court to allow discretionary review of the decision of the Court of Appeals on the Grounds that said decision is in conflict with all of the decisions of this Court previously cited, particularly State v. Wilson, supra; in addition to State v. Wilkerson, 295 NC 559 (1978), which was cited in Defendant's brief before the Court of Appeals.

WHEREFORE, Defendant respectfully petitions this honorable Court to grant discretionary review pursuant to the provisions of N.C.G.S. Section 7A-31(c)(2) and (3).

Respectfully submitted this 6th day of July, 1987.

BALEY, BALEY & CLONTZ, P.A.

By: /s/ Stanford K. Clontz

510 Northwestern Plaza
Asheville, NC 28801
704/258-0012

PERTINENT PORTIONS TESTIMONY
OF STATE'S WITNESS SHARON HALL--DIRECT

Q. And was there a time in the summer of 1982 that Mrs. Riddle and two of her children came to stay with you?

A. Yes.

Q. Do you recall when that was?

A. It was June 25th of '82 is when she called and asked if she could come out and stay for a few days.

Q. How do you remember the exact date?

A. Because I keep a little daily reminder calendar of each year, and in it -- I knew it was the summer of '82, because I knew it was the summer after my mother died, and she died in September of '81. But the June 25th, when all this first came up, I went back through my calendars and on June 25th I had written, "Wanda, Tina and Tony out stay," on that day.

Q. Do you remember how long they stayed there with you?

A. Not exactly. Several days, I know.

Q. While they were there at your home, did Mr. Riddle ever call your home?

A. Yes.

Q. And while they were there at your home, did you ever speak with Mr. Riddle by phone?

A. Yes, two or three times.

Q. Did he ever talk with you about why his wife had left him?

A. Yes.

Q. Could you tell His Honor and the jury what he said to you?

A. Well, he called one day. Wanda had gone to work. I don't know if he called just to talk to me or if he had called to talk to Wanda and didn't know she had gone to work that day or not, but he was telling me how much he loved Wanda and that --

MR. STEVENSON: Objection.

COURT: Objection sustained.

Q. Did he tell you anything about what Tina had said happened between he and Tina?

MR. SWAIN: Objection.

COURT: Well, objection overruled. Members of the jury, I again instruct you that what this witness says that Tina Hatcher told her is for the purpose of corroborating what Tina Hatcher said when she was on the stand earlier and is to be considered by you for that purpose and that purpose only, and if and only if it does in fact corroborate what Tina Hatcher said when she was on the stand.

MRS. BROWN: If Your Honor please, the question was, "Did Mr. Riddle tell you anything about what had occurred between he and Tina."

MR. SWAIN: Your Honor--

COURT: I thought she said something that Tina said.

MRS. BROWN: No.

COURT: All right, objection overruled.

MR. SWAIN: Exception.

Q. Go ahead.

A. Okay. Yeah, he said that he had -- I don't remember his --

MR. SWAIN: Objection.

COURT: Objection overruled.

Q. Go ahead, please.

A. He said that he had been playing with the girls, Tina and Sherry, but that it wasn't his fault, something to do with the way his daddy had done when he was young. We didn't go into detail on that. And I got mad and told him not to tell me that, that it was his fault because he was grown and they were just kids.

MR. SWAIN: Move to strike.

COURT: Motion denied.

A. And he said that -- I told him that

if -- if it had anything to do with his daddy, that it looked to me like he needed help. And he said that if Wanda would come back, that he would get professional help.

MR. SWAIN: Move to strike.

COURT: Motion denied.

MRS. BROWN: Thank you, Mrs. Hall. If you would, answer Mr. Stevenson's questions.

PERTINENT PORTIONS CROSS-EXAMINATION
(BY MR. STEVENSON.)

Q. Do you know a Cathy Brown?

A. Cathy Brown? I don't know the name Cathy Brown.

Q. A blond headed lady that you worked with at Merritt Knitting Mills several years back?

A. Blond.

Q. She's now working out at Gerber.

A.- Okay. Was her maiden name Davis? Does she have long blond hair, husband

named Ronnie? Yes.

Q. Yes. You saw her sometime within the last few months at Callabash West and had a conversation with her, did you not?

A. Yes, we talked for a few minutes.

Q. And David Riddle came up in that conversation?

A. Yes.

Q. And you told Cathy Brown that you thought that Mr. Riddle was innocent of these charges, did you not?

A. No.

Q. You don't recall having told her that?

A. No, I asked Cathy how David was doing, and she said that he didn't talk to anybody and that he was -- seemed like it was really on his mind, and I told her, you know, that I may be called, but I did not say that I thought he was innocent, and I didn't say I thought he was guilty.

Q. But you do remember having a conversation with this woman?

A. Yes.

Q. Do you recall about when that was?

A. It should have been a couple of weeks before Christmas this past year.

Q. How long have you known Tina?

A. How long have I known Tina?

Q. Yes.

A. As long as I've known Wanda, since 1977. No, I would have met Wanda a few months, I guess, before I met Tina.

PROFFERRED TESTIMONY OF
CATHERINE BROWN--PETITIONER'S WITNESS

MR. SWAIN: Cathy Brown.

MRS. BROWN: Before this witness testifies in front of the jury, I would like to be heard out of the presence of the jury.

COURT: All right, members of the

jury, I will ask you to step to the jury room.

(IN THE ABSENCE OF THE JURY.)

MRS. BROWN: If the Court will recall, during the examination of Sharon Hall, a highly improper question was asked of Mrs. Hall, and that question was, "Did you see Cathy Brown back in December at a restaurant? And didn't you tell Cathy Brown you thought the defendant was innocent?" People's personal feelings or opinions are not admissible in evidence because that is a matter for the jury to decide, and if Mrs. Brown's purpose in being here is to testify, "Sharon Hall told me she thought he was innocent," then her testimony would be totally improper. The question was asked of Mrs. Hall. The answer came back, "No," and damage was done at that time because it was an improper question, and I would ask the Court not to compound it by allowing this witness to testify as to what someone else may have

told her about the defendant's guilty or innocence.

MR. STEVENSON: May it please the Court, the question, first of all, was not improper because this occurrence at Calabash West was after the alleged statement on the telephone that Mrs. Hall reported that David Riddle had said something that was incriminating, something that he did it because of his daddy, or whatever it was.

If she later reports to someone that she did not feel that he was guilty, that shows she didn't believe the statement, if it ever occurred. It tends to show that it didn't occur, so it's just a classic impeachment of this statement. It's not at all improper. It's exactly what should come in.

COURT: Do you propose to show by this witness that Sharon Hall made the statement that she didn't feel that the defendant was

guilty, or that she felt the defendant was innocent? Is that what you propose to show?

MR. STEVENSON: I propose to show by this witness that she has had an opportunity to know the defendant for a number of years, that she knows that he is possessed of good character and reputation in the community where he lives and works. I propose to show by this witness that she has had an opportunity to hear his character discussed in the community by people, including Sharon Hall, who have said that he is not the type of person who would commit the act of which he is charged.

I also propose to show by this witness, in addition to these things, that at the point in time after this alleged statement on the telephone, the person who has come into this courtroom and testified to the existence of this alleged statement was making statements to other people in the community which are totally and absolutely inconsistent with her hearing or

believing that statement.

COURT: Do you want to be heard any further?

MRS. BROWN: Yes, sir. If Your Honor please, the State would still contend that any testimony elicited of this witness that, "So and so told me she thought he was innocent," is highly improper, and the State, if that were allowed, could call several people back to the witness stand to express their personal opinion or hearsay opinion as far as the defendant's guilty or innocence.

And if the Court will remember, when the improper question was posed to Mrs. Hall, she denied ever making that statement. I would ask the Court not to compound that improper question with allowing this witness to testify that somebody told her that this man was an innocent person.

MR. STEVENSON: What it's going to be, supposedly Sharon Hall said that David

Riddle is not the type of person who would do this thing.

COURT: Well, I'll sustain the objection to that.

EXCEPTION NO. 32

MR. STEVENSON: We would like to get it in the record for purposes of appeal, Your Honor, because we are offering it not only -- If I can state my basis for the record. We're offering it to show the opportunity which this witness has had to know the character and reputation of this man in the community. It's part of the basis for which she testifies, and she has heard this specific statement made about his character at a recent time.

We're also offering it for the reason that it tends to impeach what this woman was reporting about this purported confession that David made. It tends to show that it didn't happen, and it's important evidence for the defense. It goes to the very heart of the case. It's

not a collateral matter at all, Your Honor. It's something that's vitally important to the defense. We feel very strongly it would be prejudicial error to keep it out. I want to state my basis for both reasons that it's admissible evidence.

COURT: All right, I'll let you get your answer in the record.

QUESTIONS BY MR. STEVENSON:

Q. State your name for the record, please, ma'am.

A. Catherine Brown.

Q. Where do you live, ma'am?

A. Sherwin Drive off Leicester Highway.

Q. That's here in Buncombe County?

A. Yes.

Q. Are you acquainted with Mr. David Riddle who is seated here in the courtroom?

A. Yes, I have known him for five years.

Q. You have known him for five years?

A. Uh-huh.

Q. Where do you work?

A. Gerber Products.

Q. And I believe Mr. Riddle works there also?

A. Yes.

Q. Do you know what his reputation is in the community?

A. He's a very nice and quiet person. He's a real good friend. He doesn't say anything or bother anyone.

Q. Let me be very technical, if I may, and ask you first a yes or no question, whether you know what his reputation is.

A. I suppose not.

Q. Have you heard his reputation, his character, himself, generally discussed in the community?

A. No.

Q. And by the community, I include the

community where he works, ma'am, not just where he lives, but do you know what his reputation is among his co-workers?

A. He's a real hard working man.

COURT: Well --

A. That's all I know.

COURT: The answer first is yes or no, whether she knows it.

Q. Yes, or no, do you know what his reputation is where he works among the people he works with?

A. Yes, he's a fine person, in my opinion.

Q. All right. Do you know Mrs. Sharon Hall?

A. Yes, I've known here for several years. I've worked with her.

Q. And do you recall having seen her at Calabash West, the seafood restaurant?

A. Yes, my husband, myself and my baby daughter were there having dinner, and I

run into Sharon and her brother, David Teague.

Q. Do you recall when this was, ma'am?

A. It was late summer, early fall.

Q. Of 1985?

A. Yes, it was last year.

Q. Did you have a conversation with Sharon Hall?

A. Yes, she was asking me, you know, how I was doing and where I was working, and I told her. And she asked me if I knowed David, and I said, "I sure do." And I said, "It's a real bad, you know, situation that he's going through," and she said that she thought it was a bad situation also and that she didn't think he was guilty of what he was being charged with, and that was the extent of the conversation. We just talked about old times.

Q. And by David, what person were you referring to in the conversation with her?

A. David Riddle.

MR. STEVENSON: No further questions at this time, Your Honor.

COURT: Well, approach the bench.

(DISCUSSION OFF THE RECORD.)

(WITNESS EXCUSED.)

COURT: All right, bring the jury back in.

(IN THE PRESENCE OF THE JURY.)

PERTINENT PORTIONS
PETITIONER'S TESTIMONY

A. Well, she was a Ford then, but she's gotten married since then. I don't know her name now. So I ended up calling Sharon Hall about 1:00 or 2:00 on Sunday afternoon, and I asked Sharon, "Is Wanda out there?" And she said, "Yes." And I said, "Can I talk to her?" And she said, "I don't believe she wants to talk to you." And I said, "What's the matter with her?"

And she said, "She come out late last night and said she needed to stay here a few days and needed time to think, that you and her had some problems." Sharon didn't know why Wanda had come over there. And I asked Sharon if she would talk to Wanda and find out what the problem was. And she said she would, for me to call her back later that evening, so I called back about five or six o'clock, and Sharon said that Wanda did not want to talk to me and that she had finally gotten out of Wanda that Tina had went to her and told her that I had fondled her breasts.

And I told Sharon Hall, I said, "That's ridiculous." Sharon Hall agreed with me. Sharon Hall said, "I know how Tina is. I know how Tina lies."

MRS. BROWN: Objection. Motion to strike.

COURT: Objection sustained. (EXCEPTION NO. 30) Members of the jury, you will not consider the testimony of the

witness that Sharon Hall said, "I know how Tina lies."

MR. SWAIN: That corroborates her testimony here in Court, Your Honor.

MRS. BROWN: If Your Honor please, I would beg to differ with that characterization of the testimony.

WITNESS: Well, Sharon Hall told me she did not believe that I had done it.

MRS. BROWN: Objection.

COURT: Well, objection sustained.

MR. SWAIN: Your Honor, I believe that's admissible to contradict the testimony of Sharon Hall, who was a State's witness, and we offer it for that purpose alone.

MRS. BROWN: No questions. I do have one question.

QUESTIONS BY MRS. BROWN ON RECROSS-EXAMINATION

Q. Mr. Riddle, at the time that you employed Mr. Kropelnicki, there were outstanding allegations of physical abuse against you made by Tony, is that correct?

A. Ma'am, there were outstanding allegations made against Wanda and I both by Tony, with the help of Howard McFalls.

Q. Mr. Riddle, at the time that you hired and paid Mr. Kropelnicki, were there outstanding allegations of physical abuse made by Tony against you?

A. Yes, ma'am.

MRS. BROWN: No further questions.

(DISCUSSION OFF THE RECORD.)

PERTINENT PORTIONS TESTIMONY OF STATE'S WITNESS WANDA RIDDLE

A. To the best of my recollection, I think Sherry was about three years old.

Q. And how did you find out about it?

A. David told me.

Q. And do you know how David found out about it?

A. He told me that Sherry had told him, and he really seemed pleased about it.

Q. Then did you talk to Sherry about it to find out what had happened?

A. I had asked Sherry what had happened, and she said that that weekend that they spent down there with their grandparents, that she had slept in the same bed with Mr. McFalls, and he was pretty bad to drink at the time, and she said that she woke up that night and that he had his hand on her straddle.

LETTER OF WANDA RIDDLE
(Direct Quotation)

I. Wanda Darlene Riddle

A. Born 1-3-52 to David and Emma Reagon; adopted in the summer of 1968 by Howard and Lilly McFalls.

B. Had an illegitimate son (Tony) 9-10-68. Father (Roger Claude Brooks) repeatedly refused to help support child. 1-27-70 Roger Brooks was orderd to pay child support.

C. Married Timothy Eugene Hatcher, Jr. in April of 1970. Divorced on 3-26-73 after separation of over a year. (Due to Tim's alcoholism which brought on violent rages in which I was beaten). One child was born of the marriage, Tina Marie Hatcher, on 9-12-71. Have not seen him since before the divorce and receive no support. He does not know of the child.

D. Married Robert Anthony Taylor 3-31-73. Divorced 11-8-78. One child was born of the marriage, Sherry Darlene Taylor, on 6-18-73. Support is voluntary and he visits the child whenever he wishes. He sends a note with the payment ($20 a week) stating when he wants to pick her up. Divorce due to husband's "roving eye" and our incompatibility. He was also younger than I am.

E. Married Ernest David Riddle on 7-4-79. We lived together since July of 77. We have no children of this marriage. We live at Route 4, Box 259, Hamburg Mtn. Rd., Weaverville, NC 28787. We are happily married. David is a good husband and a good father. He is a Veteran of the Vietnam War. David is employed at Gerber Products Co., 1840 Hendersonville Hwy., Arden, NC. He is in maintenance. David is a member of Pine Burr Baptist Church but doesn't attend regularly. I am a member of Merrimon Avenue Baptist Church. My daughters and I do attend regularly and I was baptised in the church this past Easter Sunday. I also took Tony with us before he ran away. I have been to see the church counselor, Rev. Burgin, concerning this problem with Tony. As for my employment, I don't have a regular job. There is an older lady here in Weaverville who I help with her

housework sometimes. She calls me when she needs my help and comes after me and brings me home.

II. Problems with Tony.

A. I feel that the biggest cause of Tony's problems is the lack of a father figure. Up untill David and I met and got together, Tony never really had a man care about what he did, what kind of person he would be in the future, his grades or how he handles himself now. Tony was never disciplined by a father figure. His biggest influence was Howard McFalls. Howard lets Tony do just as Tony wants and always has. All Howard ever wanted was for Tony to love him. Tony has always been pampered by Howard and made to feel as though there is nothing that can't be his way through Howard. Over the years, Howard has worked to drive a wedge between Tony and myself. Tony does not really like school. Howard says wait till you're 16 and quit. Howard has worked even harder on trying to keep Tony from having a relationship with a step-father. He would buy candy, toys, etc. for the kids and ask, now who do you love better, David (Bob) or me? He has talked against me to Tony. All of this, of course, behind our backs. About 3 years ago, one night Sherry started to cry and said Howard had put his hands in her pants. Tony saw this and remembers it. He was fondling her. Everything came out. We quit going down there and I refused to let him see the kids. About a year ago, my brother told us Howard was dying of cancer. His time was to be up in May of 81. He was begging to see Tony and feeling sorry for him, we stupidly went back. He was allowed to see and visit Tony. The girls were around him

only when supervised by one of us. Trouble started with Tony and David. Howard told Tony if David ever laid a hand on him just to let him know. David has never abused Tony. He has spanked Tony about 6 times in 4 years. These were not beatings. The past year Tony has done very poorly in schoool. We tried everything to get Tony to do better. As a last resort, we restricted him untill such time as his grades were brought up. On 1-29-81, Tony brought report card home and was restricted. Another lifelong problem of Tony's is incontinence. I make him wash his own dirty underwear. On 2-1-81, I also spanked him for this. I assume the combination of being restricted and punished for soiling his pants, prompted him to run away on 2-1-81 after the rest of us were asleep. Tony went to Fast Fare to try to call someone in order to go to Howard's. Sheriff's Dept. picked him up. They were going to bring him home but Tony began to cry and said his stepfather had beaten him. (Punched with fist, kicked in the back, and had his head stomped.) He was taken in, stripped and examined. No bruises. Sheriff's Dept. called JoAnn Banks, Steve McFalls, Butch Banks. Got them out of bed, told them everything Tony had said and asked if they thought it was true. They brought Tony home 2-2-81. Told Tony we were going to get him some help and try to place him in a home untill we could work this out. Went to use phone and Tony ran away. Social Services Worker Becky Angel came out. We told her we needed help with Tony. Tony went to Howard's home in Dillsboro. I took out a Juvenile Restraining Order. Tony was brought back 2-4-81. We were asked what we wanted to do. Tony refused to come

home. We were promised help with Tony. (Counterpoint and Blue Ridge Mental Health) No Counterpoint and no weekly visits with Tony has happened. 2-5-81 we went to court and agreed to let S.S. have Tony. Howard has filed for custody. Mr. Nestler is his attorney.

B. Tony was placed with "Caring for Children." Ran away 3 times. Claimed Etheridge Waters had abused him. (Choked him and threw him around.) The Waters' refused to take Tony back. It was discovered Tony had continued to soil his pants while there. (See S.S. report)

C. Tony was placed in the Hollifield home. Allowed to call us once a week. Finally, after 10 weeks, Tony was allowed to come home on the afternoon of 4-10 untill the morning of 4-13. We had a good weekend. Tony wanted to stay and now wants to come home. On 4-7-81, Mrs. Ball, Mr. Bard's supervisor, told us we could file a motion for review and possibly have Tony home before Howard's case ever got to court. On 4-13-81, we tried to file but Reva May wanted to talk to Mr. Bard first. He is the foster worker. He does not wish us to file untill the investigation on Howard is complete. We feel we are being given the runaround. We have been treated like criminals, had friends and neighbors hassled for nothing. No good has come of this. Ann Smith, clinical physcologist at B.R. Mental Health, agrees with us in that Tony should be sent hom to us. We are willing to continue with the weekly visits after he comes home. She feels we have really tried and have come a long way in working out our problems. On 4-21-81 she stated that she saw no further reason for any

more counseling sessions untill Tony was back in the home.

Our home phone: 658-2387
David work no.: 274-1511, ask for the shop
Mrs. Brown no.: 645-4933 (lady I help)

AMENDMENT 14

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing pleading upon the Honorable Lacy H. Thornburg, Attorney General for North Carolina, by depositing a copy thereof in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Post Office Department properly addressed to said party.

This the 26th day of October, 1987.

James M. Baley, Jr.

James M. Baley, Jr.